

"Usage Factor" means the average usage by any Communications Provider (including the Dominant Provider itself) of each Network Component in using or providing a particular product or service or carrying out a particular activity.

3. Save for the purposes of paragraph 1, except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them and otherwise any word or expression shall have the same meaning as it has in the Act.
4. The Interpretation Act 1978 shall apply as if each of the conditions were an Act of Parliament.
5. Headings and titles shall be disregarded.

Part 2: The conditions

Condition HA1 – Requirement to provide network access on reasonable request

HA1.1 Where a Third Party reasonably requests in writing Network Access, the Dominant Provider shall provide that Network Access. The Dominant Provider shall also provide such Network Access as Ofcom may from time to time direct.

HA1.2 The provision of Network Access in accordance with paragraph HA1.1 shall occur as soon as reasonably practicable and shall be provided on fair and reasonable terms, conditions and charges and on such terms, conditions and charges as Ofcom may from time to time direct.

HA1.3 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition.

Condition HA2 – Requirement not to unduly discriminate

HA2.1 The Dominant Provider shall not unduly discriminate against particular persons or against a particular description of persons, in relation to matters connected with Network Access.

HA2.2 In this Condition, the Dominant Provider may be deemed to have shown undue discrimination if it unfairly favours to a material extent an activity carried on by it so as to place at a competitive disadvantage persons competing with the Dominant Provider.

Condition HA3 – Basis of charges

HA3.1 Unless Ofcom directs otherwise from time to time, the Dominant Provider shall secure, and shall be able to demonstrate to the satisfaction of Ofcom, that each and every charge offered, payable or proposed for Network Access covered by Condition HA1 is reasonably derived from the costs of provision based on a forward looking long run incremental cost approach and allowing an appropriate mark up for the recovery of common costs including an appropriate return on capital employed.

HA3.2 The Dominant Provider shall comply with any direction Ofcom may from time to time direct under this Condition.

Condition HA4 – Requirement to publish a reference offer

HA4.1 Except in so far as Ofcom may otherwise consent in writing, the Dominant Provider shall publish a Reference Offer and act in the manner set out below.

HA4.2 Subject to paragraph HA4.8 below, the Dominant Provider shall ensure that a Reference Offer in relation to the provision of Network Access includes at least the following:

- (a) a description of the Network Access to be provided, including technical characteristics (which shall include information on network configuration where necessary to make effective use of Network Access);
- (b) the locations of the points of Network Access;
- (c) the technical standards for Network Access (including any usage restrictions and other security issues);
- (d) the conditions for access to ancillary, supplementary and advanced services (including operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing);
- (e) any ordering and provisioning procedures;
- (f) relevant charges, terms of payment and billing procedures;
- (g) details of interoperability tests;
- (h) details of maintenance and quality as follows:
 - (i) specific time scales for the acceptance or refusal of a request for supply and for completion, testing and hand-over or delivery of services and facilities, for provision of support services (such as fault handling and repair);
 - (ii) service level commitments, namely the quality standards that each party must meet when performing its contractual obligations;
 - (iii) the amount of compensation payable by one party to another for failure to perform contractual commitments;
 - (iv) a definition and limitation of liability and indemnity; and
 - (v) procedures in the event of alterations being proposed to the service offerings, for example, launch of new services, changes to existing services or change to prices;
- (i) details of any relevant intellectual property rights;
- (j) a dispute resolution procedure to be used between the parties;
- (k) details of duration and renegotiation of agreements;
- (l) provisions regarding confidentiality of non-public parts of the agreements;
- (m) rules of allocation between the parties when supply is limited (for example, for the purpose of co-location or location of masts);
- (n) the standard terms and conditions for the provision of Network Access;
- (o) the amount applied to:
 - (i) each Network Component used in providing Network Access with the relevant Usage Factors;
 - (ii) the Transfer Charge for each Network Component or combination of Network Components described above;

reconciled in each case to the charge payable by a Communications Provider other than the Dominant Provider.

HA4.3 to the extent that the Dominant Provider provides to itself Network Access that:

- (i) is the same, similar or equivalent to that provided to any other person; or
- (ii) may be used for a purpose that is the same, similar or equivalent to that provided to any other person,

in a manner that differs from that detailed in a Reference Offer in relation to Network Access provided to any other person, the Dominant Provider shall ensure that it publishes a Reference Offer in relation to the Network Access that it provides to itself which includes, where relevant, at least those matters detailed in paragraphs HA4.2(a)-(o).

HA4.4 The Dominant Provider shall, within one month of the date that this Condition enters into force, publish a Reference Offer in relation to any Network Access that it is providing as at the date that this Condition enters into force.

HA4.5 The Dominant Provider shall update and publish the Reference Offer in relation to any amendments or in relation to any further Network Access provided after the date that this Condition enters into force.

HA4.6 Publication referred to above shall be effected by:

- (a) placing a copy of the Reference Offer on any relevant website operated or controlled by the Dominant Provider; and
- (b) sending a copy of the Reference Offer to Ofcom.

HA4.7 The Dominant Provider shall send a copy of the current version of the Reference Offer to any person at that person's written request (or such parts which have been requested).

HA4.8 The Dominant Provider shall make such modifications to the Reference Offer as Ofcom may direct from time to time.

HA4.9 The Dominant Provider shall provide Network Access at the charges, terms and conditions in the relevant Reference Offer and shall not depart therefrom either directly or indirectly.

HA4.10 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition.

Condition HA5 – Requirement to notify technical information

HA5.1 Save where Ofcom consents otherwise, where the Dominant Provider-

(a) proposes to provide Network Access covered by Condition HA1, the terms and conditions for which comprise new-

- (i) technical characteristics (including information on network configuration where necessary to make effective use of the Network Access);

(ii) locations of the points of Network Access; or

(iii) technical standards (including any usage restrictions and other security issues),

or

(b) proposes to amend an existing Access Contract covered by Condition HA1 by modifying the terms and conditions listed in paragraph HA5.1(a)(i) to (iii) on which the Network Access is provided,

the Dominant Provider shall publish a written notice (the "Notice") of the new or amended terms and conditions within a reasonable time period but not less than 90 days before either the Dominant Provider enters into an Access Contract to provide the new Network Access or the amended terms and conditions of the existing Access Contract come into effect.

HA5.2 The Dominant Provider shall ensure that the Notice includes-

(a) a description of the Network Access in question;

(b) a reference to the location in the Dominant Provider's Reference Offer of the relevant terms and conditions;

(c) the date on which or the period for which the Dominant Provider may enter into an Access Contract to provide the new Network Access or any amendments to the relevant terms and conditions will take effect (the "effective date").

HA5.3 The Dominant Provider shall not enter into an Access Contract containing the terms and conditions identified in the Notice or apply any new relevant terms and conditions identified in the Notice before the effective date.

HA5.4 Publication referred to in paragraph HA5.1 shall be effected by:

(a) placing a copy of the Notice on any relevant website operated or controlled by the Dominant Provider;

(b) sending a copy of the Notice to Ofcom; and

(c) sending a copy of the Notice to any person at that person's written request, and where the Notice identifies a modification to existing relevant terms and conditions, to every person with which the Dominant Provider has entered into an Access Contract covered by Condition HA1. The provision of such a copy of the Notice may be subject to a reasonable charge.

THE DIRECTIONS

Schedule 11

Direction under section 49 of the Communications Act 2003 ('the Act') and SMP Services Condition G1 imposed on British Telecommunications plc ('BT') as a result of the market power determinations made by the Office of Communications ('Ofcom') that BT has significant market power in the market for the provision of traditional interface symmetric broadband origination with a bandwidth capacity up to and including eight megabits per second for the UK (excluding the Hull Area)

WHEREAS:

- (A) As a result of a market analysis carried out by Ofcom, it determined on 8 December 2008, in accordance with sections 48 (1) and 80 of the Act, that the Dominant Provider has significant market power in the markets for the provision of wholesale traditional interface symmetric broadband origination with a bandwidth capacity up to and including eight megabits per second for the UK (excluding the Hull Area);
- (B) In accordance with section 79 of the Act Ofcom set SMP Service Condition G1 which imposes various obligations on the Dominant Provider, *inter alia*, the obligation to comply with any Direction Ofcom may from time to time make under this Condition;
- (C) This Direction concerns matters to which Condition G1 relates;
- (D) For the reasons set out in the explanatory statement accompanying this Direction, Ofcom is satisfied that, in accordance with section 49(2) of the Act, this Direction is:
 - (i) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
 - (ii) not such as to discriminate unduly against particular persons or against a particular description of persons;
 - (iii) proportionate to what it is intended to achieve; and
 - (iv) in relation to what it is intended to achieve, transparent;
- (E) For the reasons set out in the explanatory statement accompanying this Direction, Ofcom is satisfied that it has acted in accordance with the relevant duties set out in sections 3 and 4 of the Act;
- (F) Ofcom has on 17 January 2008 published a notification of the proposed Direction in accordance with section 49 of the Act;
- (G) By virtue of section 49(9) of the Act, Ofcom may give effect to any proposals to give the Direction with or without modification, where
 - (i) it has considered every representation about the proposals duly made to OFCOM, within the time period specified in the Consultation Notification; and
 - (ii) it has regard to every international obligation of the United Kingdom (if any) which has been notified to OFCOM for this purpose by the Secretary of State; and
- (H) OFCOM received responses to the proposed Direction and has considered every such representation duly made to it in respect of the proposals; and the Secretary of State has

not notified OFCOM of any international obligation of the United Kingdom for this purpose;

NOW, therefore, pursuant to Condition G1 Ofcom makes the following Direction:

Definitions

For the purpose of interpreting this Direction the following definitions shall apply:

"Act" means the Communications Act 2003;

"Dominant Provider" means British Telecommunications plc ('BT'), whose registered company number is 1800000 and any British Telecommunications plc subsidiary or holding company, or any subsidiary of that holding company, all as defined by Section 736 of the Companies Act 1985 as amended by the Companies Act 1989;

"Hull Area" means the area defined as the 'Licensed Area' in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and KCOM Group plc;

"Point of Connection" means a point at which the Dominant Provider's Electronic Communications Network and another person's Electronic Communications Network are connected;

"Third Party" means a person providing a public Electronic Communications Service or a person providing a public Electronic Communications Network.

For the purpose of this Direction the following terms shall have the meaning as set out in the Dominant Provider's Standard PPC Handover Agreement, as at the date of publication of this Direction, but with the necessary changes in order to ensure compliance with the Direction:

- Advance Capacity Order
- Advance Order Commitment
- BT Retail Private Circuit
- BT Serving Node
- Capacity Order
- Capacity Profile
- Customer Sited Handover ("CSH")
- Forecast Profile
- In-Span Handover ("ISH")
- Re-Designation

- Qualifying BT Retail Private Circuit

The following definitions shall also apply for the purpose of this Direction:

Term	Definition
Acceptance of Terms	Date on which a Third Party confirms acceptance of delivery conditions and is committed to the order.
Civil Works	Works that necessitate the digging up of a street for the installation of ducts.
Committed Delivery Date	The date confirmed by the Dominant Provider as the delivery date.
Firm Offer Confirmation ("FOC")	Confirmation by the Dominant Provider in writing (by fax or e-mail) to a Third Party of the delivery conditions including price and Committed Delivery Date, after acknowledging receipt of an order for a Partial Private Circuit or Network Infrastructure from a Third Party.
FOC Acceptance Interval	The number of working days from the FOC Date until the Acceptance of Terms.
FOC Date	The date on which the Dominant Provider makes a Firm Offer Confirmation.
FOC Receipt Interval	The number of working days from the Order Request Date until the FOC Date.
Installation Date	Date of installation of a Partial Private Circuit or Network Infrastructure.
Network Infrastructure	The categories of products listed in the table contained in paragraph 51 of this Direction.
Order Request Date	Date on which a Third Party dispatches a valid Partial Private Circuit order, or Network Infrastructure order, to the Dominant Provider.
Partial Private Circuit ("PPC")	A circuit provided pursuant to the PPC Contract and in accordance with the Directions.
PPC Contract	The Dominant Provider's Standard PPC Handover Agreement as at the date of publication of this Direction.
Provisioning Interval	The number of working days from the Order

	Request Date until the Installation Date.
Requisite Period	The period commencing on the Order Request Date and ending on the applicable working day as set out in the tables in paragraphs 41 and 51 of this Direction.
Reduced Requisite Period	The period commencing on the Order Request Date and ending on the applicable working day as set out in the tables in paragraphs 44 and 54 of this Direction.
Subsequent Partial Private Circuit	A Partial Private Circuit which can be delivered on dedicated pre-provided Network Infrastructure where spare capacity exists.

Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them.

The Interpretation Act 1978 shall apply as if this Direction was an Act of Parliament.

Headings and titles shall be disregarded.

The Dominant Provider shall provide Partial Private Circuits and shall do so in accordance with this Direction.

Migration

1. The 12 month contractual minimum term placed upon a Third Party, for the provision of a Partial Private Circuit which has been migrated pursuant to the PPC Contract, shall be measured from the date that the original BT Retail Private Circuit was brought into service.
2. The Dominant Provider shall not impose any deadline before which a Third Party must inform the Dominant Provider that it requires a BT Retail Private Circuit to be migrated to an equivalent Partial Private Circuit status under the PPC Contract.
3. The Dominant Provider shall allow a BT Retail Private Circuit, which fell within paragraph 1.3 of the Phase 1 PPC Direction published on 14 June 2002, to be considered under the PPC Contract as a Qualifying BT Retail Private Circuit.
4. A circuit deemed to be a Qualifying BT Retail Private Circuit under paragraphs 20 or 21 of the Phase 2 PPC Direction published on 23 December 2002 shall continue to be a Qualifying BT Retail Private Circuit.
5. Where a Third Party was not previously eligible to migrate a BT Retail Private Circuit to a Qualifying BT Retail Private Circuit, but subsequently becomes eligible to do so, the Dominant Provider shall, for 60 working days following the date on which the Third Party's circuits become eligible for migration, allow migration without the Third Party incurring any penalty (including any default or early termination charge) under its agreement with the Dominant Provider for the provision of BT Retail Private Circuits.
6. Where, at the date of publication of this Direction, the Dominant Provider offers a BT Retail Private Circuit product and does not offer an equivalent Partial Private Circuit product, but subsequently offers to provide an equivalent Partial Private Circuit product, it shall allow a Third Party to migrate to the equivalent Partial Private Circuit product without it incurring

any penalty (including any default or early termination charge) under its agreement with the Dominant Provider for the provision of BT Retail Private Circuits, for a period of 60 working days following the date on which the equivalent Partial Private Circuit product is first offered by the Dominant Provider.

7. Where the Dominant Provider has taken, or will take, longer than five working days from receiving a request from a Third Party to migrate a Qualifying BT Retail Private Circuit to a Partial Private Circuit, it shall give to the Third Party a refund as set out in paragraphs 8 and 9 of this Direction.

8. Where paragraph 7 of this Direction applies, the Dominant Provider shall refund to the Third Party a sum of money equal to the difference between:

- the charge levied by the Dominant Provider for the BT Retail Private Circuit to which the request for migration relates; and
- the charge levied by the Dominant Provider for the Partial Private Circuit to which the request for migration relates.

9. The refund set out in paragraph 8 of this Direction shall cover the period from the date the Dominant Provider receives the request to migrate until the date the Dominant Provider completes the migration.

10. The Dominant Provider shall, upon a Third Party's written request, provide to the Third Party a map of its network within the United Kingdom which clearly illustrates and labels the geographic location of each Dominant Provider tier 1, tier 1.5, tier 2, and tier 3 nodes.

Forecasts

11. The Dominant Provider shall only require a Third Party to provide a profile of future Partial Private Circuit capacity ordering intentions over a 12 month period, on a national aggregate basis for groupings of bandwidths no narrower than the following:

- less than 1 Mbit/s; and
- 1 Mbit/s through to 2 Mbit/s.

12. The Dominant Provider shall allow a Third Party to set its Advance Capacity Order and Advance Order Commitment without any penalty by up to, 10% (by volume) below, or 20% (by volume) above, the amount stated in the Third Party's previous Capacity Profile or Forecast Profile for the period covered by the Advance Capacity Order or Advance Order Commitment.

13. The Dominant Provider shall allow a Third Party to revise periods covered by its previously stated Capacity Profile and Forecast Profile without any penalty by up to, 30% (by volume) below, or 30% (by volume) above, the amount stated in the Third Party's previous Capacity Profile or Forecast Profile, provided that paragraph 12 of this Direction does not apply.

14. In calculating any increase to an Advance Capacity Order, Advance Order Commitment, Capacity Profile or Forecast Profile pursuant to paragraphs 12 and 13 of this Direction, the outcome of the revision shall, if not an integer, be rounded up to the nearest integer.

15. In calculating any decrease to an Advance Capacity Order, Advance Order Commitment, Capacity Profile or Forecast Profile pursuant to paragraphs 12 and 13 of this Direction, the outcome of the revision shall, if not an integer, be rounded down to the nearest integer.

16. Where a Third Party places a Capacity Order at a Point of Connection for the period corresponding to that of the Advance Capacity Order, which total less than its Advance Capacity Order for the Point of Connection, the Dominant Provider may levy a charge no more than a sum equal to:

$$[(80\% \text{ of } B) - C] \times \text{£}2,490$$

Where B is the total capacity provision by number of VC4-equivalent units specified in the relevant Advance Capacity Order in respect of each Point of Connection; and

Where C is the number of VC4-equivalents ordered during the period to which the relevant Advance Capacity Order relates in respect of each Point of Connection, but does not include cancellations of Capacity Orders made during or after the relevant Advanced Capacity Order period, but does include any Capacity Order cancelled as a result of the inability of the Dominant Provider to secure consents for CSH links.

17. Where a Third Party places orders for Partial Private Circuits below 1 Mbit for the period corresponding to that of the Advanced Order Commitment, which total less than its Advance Order Commitment for the Partial Private Circuits below 1 Mbit, the Dominant Provider may levy a charge no more than a sum equal to:

$$[(80\% \text{ of } B) - C] \times \text{£}52$$

Where B is the total Advance Order Commitment for Private Partial Circuits below 1 Mbit; and

Where C is the number of Partial Private Circuits below 1 Mbit ordered during the period to which the Advance Order Commitment relates, but does not include cancellations of orders for Partial Private Circuits made during or after the relevant Advanced Order Commitment period, but does include any order for a Partial Private Circuit cancelled as a result of the inability of the Dominant Provider to secure consents for Partial Private Circuits.

18. Where a Third Party places orders for Partial Private Circuits from 1 Mbit through to 2 Mbit/s for the period corresponding to that of the Advanced Order Commitment, which total less than its Advance Order Commitment for Partial Private Circuits from 1 Mbit through to 2 Mbit/s, the Dominant Provider may levy a charge no more than a sum equal to:

$$[(80\% \text{ of } B) - C] \times \text{£}143$$

Where B is the total Advance Order Commitment for Private Partial Circuits from 1 Mbit through to 2 Mbit/s; and

Where C is the number of Partial Private Circuits from 1 Mbit through to 2 Mbit/s ordered during the period to which the Advance Order Commitment relates, but does not include cancellations of orders for Partial Private Circuits made during or after the relevant Advanced Order Commitment period, but does include any order for a Partial Private Circuit cancelled as a result of the inability of Dominant Provider to secure consents for Partial Private Circuits.

19. [Paragraph not used].

20. In calculating (80% of B) in paragraphs 16 to 18 inclusive of this Direction the outcome shall, if not an integer, be rounded down to the nearest integer.

Service level agreements (SLAs)

General

21. The Dominant Provider shall set a Committed Delivery Date for each Partial Private Circuit or Network Infrastructure ordered from it by a Third Party and shall be required to provide reasons to justify a Committed Delivery Date which is set beyond the relevant Requisite Period (RP) and that any extension of the Committed Delivery Date beyond the relevant Requisite Period (RP) shall be made subject to the consent of the Third Party concerned whose consent shall not be unreasonably withheld.

22. For each Partial Private Circuit or Network Infrastructure ordered from the Dominant Provider by a Third Party, the Dominant Provider shall provide to a Third Party Firm Offer Confirmation in the manner set out in the definition section of this Direction.

23. The time scales and levels of fixed individual compensation payments to be payable under the service level agreement shall be those set out in paragraph 34 of this Direction, unless otherwise agreed between the Dominant Provider and a Third Party, or except to the extent that Ofcom otherwise consents.

24. Unless otherwise agreed between the Dominant Provider and a Third Party, any fixed individual compensation payment, or reimbursement pursuant to paragraph 28 of this Direction, payable by the Dominant Provider to a Third Party pursuant to the Directions shall be offset by the Dominant Provider against the money owed to it by the Third Party, on a quarterly basis. The Dominant Provider shall keep complete and accurate records of the amounts it has offset in accordance with this paragraph. Such records shall be made available by the Dominant Provider following a request by a Third Party.

25. The Dominant Provider shall not be liable to pay fixed individual compensation payments pursuant to the Directions for periods of delay which arise due to circumstances beyond its reasonable control. The Dominant Provider shall notify a Third Party as soon as reasonably practicable when such circumstances arise. All contractors or sub-contractors of whatever level, and their respective employees, servants and agents, shall for the purpose of this paragraph be treated as employees of the Dominant Provider. Major construction works shall not be considered circumstances beyond the Dominant Provider's reasonable control.

26. The Dominant Provider shall ensure that any time limits set out in this Direction shall not apply to a Third Party to the extent that periods of delay arise due to circumstances beyond its reasonable control. The Third Party shall notify the Dominant Provider as soon as reasonably practicable when such circumstances arise. All contractors or sub-contractors of whatever level, and their respective employees, servants and agents, shall for the purpose of this paragraph be treated as employees of the relevant Third Party.

27. The Dominant Provider shall, at the reasonable request of a Third Party, postpone the Committed Delivery Date of a Partial Private Circuit or Network Infrastructure if such postponement is technically and organisationally reasonable. In agreeing to such a postponement the Dominant Provider shall only charge for reasonable additional expenses it has directly incurred as a result of the postponement.

28. The Dominant Provider shall only postpone the Committed Delivery Date of a Partial Private Circuit or Network Infrastructure with the written agreement of the Third Party. The Dominant Provider shall inform the Third Party as soon as reasonably possible of any

proposed postponement of the Committed Delivery Date. Where such a postponement takes place the Dominant Provider shall reimburse the Third Party for any reasonable additional cost incurred by the Third Party as a direct result of the postponement.

29. The FOC Receipt Interval shall be a maximum of:

- five working days for Partial Private Circuits of less than 2 Mbit/s; and
- eight working days for Partial Private Circuits of 2 Mbit/s and Network Infrastructure;

regardless of how many Partial Private Circuits are, or the amount of Network Infrastructure is, ordered at a particular site.

30. The Dominant Provider shall ensure that the FOC Acceptance Interval is a maximum of one working day for Partial Private Circuits of 2 Mbit/s or below and two working days for Network Infrastructure. Where a Third Party has not informed the Dominant Provider of its Acceptance of Terms or rejection of the order within five working days of the FOC Date, the Dominant Provider may cancel the Third Party's order.

31. The Dominant Provider shall keep complete and accurate records of the ordering, provision and repair of Partial Private Circuits and Network Infrastructure it provides to a Third Party.

32. Where any Partial Private Circuit or Network Infrastructure which is ordered by a Third Party is in excess of 110% (by volume), rounded up to the nearest integer where necessary, of its Advance Order Commitment or Advance Capacity Order, the applicable Requisite Period set out in the tables in paragraphs 41 and 51 of this Direction shall be extended by 50% and rounded up to the nearest working day, where necessary, for the purposes of calculating fixed individual compensation payments.

Unliquidated damages

33. Nothing in the PPC Contract, as amended by the Direction, shall prevent a Third Party from bringing a claim against the Dominant Provider for unliquidated damages over and above the fixed individual compensation payments set out in the Direction.

Service level guarantees (SLGs)

Modifications to the PPC Contract

34. The Dominant Provider shall amend the terms and conditions which govern the supply of Partial Private Circuits set out in the PPC Contract to provide the following:

Compensation per event and value of compensation

a) The Dominant Provider shall pay the Third Party compensation for each day or part day of delay in delivery of service beyond the Committed Delivery Date or the Third Party's Requirement Date (whichever is later).

b) The Dominant Provider shall pay the Third Party compensation for each and every fault which has not been restored:

- for Regular Care customers, in the first two days on a per day basis thereafter; and
- for Enhanced Care customers, in the first five hours on a per hour basis thereafter.

c) The compensation payable in event of the each late provision of the required Partial Private Circuit or Network Infrastructure service shall be set at 100% of one month's line rental (or Network Infrastructure rental) for every day or part day of delay beyond the Committed Delivery Date or Requirement Date (whichever is later), up to a maximum of 60 days.

d) The compensation payable in the event of each late fault repair in relation to a Partial Private Circuit or Network Infrastructure shall be:

- for Regular Care customers, 100% of one month's line rental for every fault which has not been restored in the first two days for every day thereafter until service is restored, up to a maximum of 30 days; and
- for Enhanced Care customers, 15% of one month's line rental for every fault which has not been restored in the first five hours for every hour thereafter until service is restored, up to a maximum of 200 hours.

e) Any limits on compensation payable as a result of a failure to satisfy the service guarantees shall be removed other than those set out in (c) and (d) above.

Additional losses

f) Any compensation payable under the contract shall be without prejudice to any right of either party to claim for additional loss.

Proactive payments

g) The Dominant Provider shall monitor its performance against the service guarantees for fault repair and provision and compensate Third Parties proactively should it fail to satisfy the service guarantees. Compensation payments shall be made as soon as possible after the event and not later than the billing cycle following the billing cycle after the event unless not practicable. For the avoidance of doubt, compensation shall be payable without the need for a Third Party to make a claim.

35. The terms and conditions amended as set out in paragraph 34 above shall take effect from the 90th day after the publication of the Final Statement.

Partial Private Circuits

Quick quote and very high bandwidth quote on line

36. The Dominant Provider shall provide to a Third Party, upon written request, the necessary wholesale network and pricing information to enable the Third Party to obtain the same information for Partial Private Circuits that is available to the Dominant Provider's retail arm, for its "Quick Quote" quote facilities.

Concurrency of Partial Private Circuit and ISH link and CSH link delivery times

37. Where a Third Party has ordered a Partial Private Circuit, and the operation of the circuit requires the provision of an ISH link or CSH link, the Dominant Provider shall ensure that the delivery dates of the Partial Private Circuit and the CSH link or ISH link are the same.

Expedited orders

38. Upon a Third Party's written request, the Dominant Provider shall make reasonable endeavours to set a Committed Delivery Date for Partial Private Circuits within 50% of the relevant Requisite Period set out in the table in paragraph 41 of this Direction, rounded up to

the nearest working day where necessary, for at least 15% (by volume) of a Third Party's previous month's order. The Third Party shall inform the Dominant Provider which particular Partial Private Circuits it shall endeavour to be expedited pursuant to this paragraph. This paragraph shall only apply to the delivery of Partial Private Circuits of 2 Mbit/s or less. This paragraph shall not apply to Partial Private Circuits which exceed 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party's Advance Order Commitment.

39. Paragraph 48 of this Direction does not apply to orders of Partial Private Circuits made pursuant to paragraph 38 of this Direction.

Time scales for fixed individual compensation

40. Where the Committed Delivery Date for Partial Private Circuits is set by the Dominant Provider later than the relevant Requisite Period (as set out in the table in paragraph 41 of this Direction) without the agreement of a Third Party, the Dominant Provider shall be liable to pay the Third Party a fixed individual compensation payment in accordance with paragraph 34 of this Direction.

41. Where the Committed Delivery Date for Partial Private Circuits is set by the Dominant Provider either, later than the relevant Requisite Period (as set out in the table below) but with the agreement of a Third Party, or within the Requisite Period, the Dominant Provider shall be liable to pay the Third Party a fixed individual compensation payment in accordance with paragraph 34 of this Direction.

Bandwidth of Partial Private Circuit	Requisite Period
64 kbit/s	10 working days
128 kbit/s to 256 kbit/s delivered over copper	10 working days
128 kbit/s to 256 kbit/s delivered over fibre	30 working days
320 kbit/s to 960 kbit/s	30 working days
1 Mbit/s	30 working days
2 Mbit/s	30 working days
Subsequent Partial Private Circuit of 2 Mbit/s	10 working days

Third Party's ability to cancel order

42. Where the Provisioning Interval exceeds the relevant Requisite Period set out in the table in paragraph 41 of this Direction, a Third Party shall be allowed to cancel its order for a Partial Private Circuit after the Cancellation Threshold (as set out in the table below) has expired. The Cancellation Threshold shall commence upon the expiry of the relevant Requisite Period set out in the table in paragraph 41 of this Direction. The Requisite Periods in the table in paragraph 41 shall apply, for the purposes of this paragraph, regardless of whether there is a delay in delivery of a Partial Private Circuit which is due to circumstances beyond the Dominant Provider's reasonable control but not including delay by a Third Party.

Requisite Period set out in the table in paragraph 41 of this Direction	Cancellation Threshold
10 working days	10 working days

30 working days	20 working days
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43. Where a Third Party cancels a Partial Private Circuit pursuant to paragraph 42 of this Direction, the Dominant Provider shall not charge the Third Party for the circuit and shall not charge for cancelling the circuit. The Dominant Provider shall also be liable to pay the Third Party any fixed individual compensation payments accumulated pursuant to the PPC Contract as amended by the Directions.

Reduced Requisite Periods for Partial Private Circuits

44. The Dominant Provider shall ensure that for at least 70% (by volume) of Partial Private Circuits of a particular bandwidth delivered by the Dominant Party to a Third Party within a three month period (such period not to be calculated on a rolling basis) the Committed Delivery Date is set within the relevant Reduced Requisite Period (as set out in the table below).

Bandwidth of Partial Private Circuit	Reduced Requisite Period
128 kbit/s to 256 kbit/s delivered over fibre	20 working days
320 kbit/s to 960 kbit/s	20 working days
1 Mbit/s	20 working days
2 Mbit/s	20 working days

45. In calculating the 70% (by volume) of Partial Private Circuits to which paragraph 44 of this Direction applies the following shall not be included:

- Partial Private Circuits of 64 kbit/s;
- Partial Private Circuits of 128 kbit/s to 256 kbit/s delivered over copper;
- Subsequent Private Partial Circuits of 2Mbit/s;
- Partial Private Circuit orders to which paragraph 38 of this Direction applies; and
- Partial Private Circuits which exceed 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party's Advance Order Commitment.

46. The Reduced Requisite Periods set out in the table in paragraph 44 of this Direction apply only if, in the previous three month reporting period (such period not to be calculated on a rolling basis), a Third Party has ordered from the Dominant Provider at least ten Partial Private Circuits of the same bandwidth where such Partial Private Circuits are 2 Mbit/s or less.

47. For the purposes of this Direction, in determining whether 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party's Advance Order Commitment has been exceeded, the calculation shall be at a national level for each individual Partial Private Circuit bandwidth category and applied in the order in which the Partial Private Circuits were ordered by the Third Party.

Multiple orders

48. Where the Dominant Provider receives an order for more than 10 Partial Private Circuits at one site from a Third Party, the relevant Requisite Period applicable to determine whether the Dominant Provider shall pay fixed individual compensation as set out in paragraphs 40 and 41 of this Direction, shall be the relevant Requisite Period set out in the table in paragraph 41 of this Direction increased by a maximum of 50%. The Dominant Provider shall inform the Third Party of the revised time scales as soon as reasonably practicable.

Availability of service

49. When total loss of service (i.e. total loss of service for one minute or longer) occurs three or more times, within a 12 month period, to a Partial Private Circuit, the Third Party shall not be liable to the Dominant Provider for the monthly rental in any subsequent month where total loss of failure occurs to the Partial Private Circuit, until such time as 12 months have passed and the Partial Private Circuit has not suffered total loss of service. Occurrences of total loss of service which result in the Dominant Provider being liable to pay fixed individual compensation pursuant to paragraphs 62, 63 and 64 of this Direction, shall not be considered as an occurrence of a total loss of service for the purposes of this paragraph.

Network Infrastructure

Time scales for fixed individual compensation

50. Where the Committed Delivery Date for Network Infrastructure is set by the Dominant Provider later than the relevant Requisite Period (as set out in the table in paragraph 51 of this Direction) without the agreement of a Third Party, the Dominant Provider shall be liable to pay the Third Party a fixed individual compensation payment in accordance with paragraph 34 of this Direction.

51. Where the Committed Delivery Date for Network Infrastructure is set by the Dominant Provider either, later than the relevant Requisite Period (as set out in the table below) but with the agreement of a Third Party, or within the Requisite Period, the Dominant Provider shall be liable to pay the Third Party a fixed individual compensation payment in accordance with paragraph 34 of this Direction.

Network Infrastructure	Requisite Period (where the Dominant Provider needs to carry out Civil Works)	Requisite Period (where the Dominant Provider does not need to carry out Civil Works)
ISH links	110 working days	85 working days
CSH links	110 working days	85 working days
ISH links – provision of new multiplexor on an existing Point of Connection	Not applicable	60 working days
ISH links - provision of extra STM-1 interface on existing STM-1 ISH SMA4 multiplexor	Not applicable	60 working Days

CSH links - provision of new multiplexor on existing Point of Connection

Not applicable

60 working Days

CSH links requiring only provision of new tributary card on existing multiplexor

Not applicable

25 working Days

Third Party's ability to cancel order

52. Where the Provisioning Interval exceeds the relevant Requisite Period set out in the table in paragraph 51 of this Direction, a Third Party shall be allowed to cancel its order for Network Infrastructure after the Cancellation Threshold (as set out in the table below) has expired. The Cancellation Threshold shall commence upon the expiry of the relevant Requisite Period set out in the table in paragraph 51 of this Direction. The Requisite periods in the table in paragraph 51 shall apply, for the purposes of this paragraph, regardless of whether there is a delay in delivery of Network Infrastructure which is due to circumstances beyond the Dominant Provider's reasonable control but not including delay by a Third Party.

Requisite Period set out in the table in paragraph 51 of this Direction	Cancellation Threshold
21 to 40 working days	20 working days
41 to 60 working days	25 working days
61 to 90 working days	30 working days
Over 90 working days	40 working days

53. Where a Third Party cancels Network Infrastructure pursuant to paragraph 52 of this Direction, the Dominant Provider shall not charge the Third Party for the Network Infrastructure and shall not charge for cancelling the Network Infrastructure. The Dominant Provider shall also be liable to pay the Third Party any fixed compensation payments accumulated pursuant to the PPC Contract as amended by the Directions.

Reduced Requisite periods for Network Infrastructure

54. The Dominant Provider shall ensure that for at least 70% (by volume) of the total VC4-equivalents of Network Infrastructure delivered by it to a Third Party during a three month period (such period not to be calculated on a rolling basis) the Committed Delivery Date is set within the relevant Reduced Requisite Period (as set out in the table below).

Network Infrastructure	Reduced Requisite Period (where the Dominant Provider needs to carry out Civil Works)	Reduced Requisite Period where the Dominant Provider does not need to carry out Civil Works)
ISH links	75 working days	60 working days
CSH links	75 working days	60 working days
ISH links - provision of new multiplexor on an		

existing Point of Connection	Not applicable	40 working days
ISH links - provision of extra STM-1 interface on existing STM-1 ISH SMA4 multiplexor	Not applicable	40 working days
CSH links - provision of new multiplexor on existing Point of Connection	Not applicable	40 working days
CSH links requiring only provision of new tributary card on existing multiplexor	Not applicable	20 working days

55. In calculating the 70% (by volume) of the total VC4-equivalents of Network Infrastructure to which paragraph 54 of this Direction applies the following shall not be included:

- Network Infrastructure which exceeds 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party's Advance Capacity Order.

56. The Reduced Requisite Periods set out in the table in paragraph 54 of this Direction only apply if, in the previous three month reporting period (such period not to be calculated on a rolling basis) a Third Party has ordered from the Dominant Provider at least 2 VC4-equivalents of Network Infrastructure. For the purposes of this paragraph the first reporting period of three months shall be the first such reporting period falling after 30 working days following the date of publication of this Direction.

57. For the purposes of this Direction, in determining whether 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party's Advance Capacity Order has been exceeded, the calculation shall be made using VC4-equivalents at each Point of Connection applied in the order in which the Network Infrastructure was ordered by the Third Party.

Repair of Partial Private Circuits and Network Infrastructure

58. Where the Dominant Provider offers to a Third Party Regular Care and Enhanced Care for Partial Private Circuits and Network Infrastructure it shall do so at a cost orientated price and as set out in the table below:

	Operational hours	Repair/response time	Extras
Regular Care	Normal working hours	Response within one working day of receipt of a fault report by a Third Party. Repair within two working days of receipt of a fault report by a Third	If a fault is not remedied within two working days of receipt of a fault report by a Third Party, the Dominant Provider shall call the Third Party to report progress being made to remedy the

		Party.	fault.
Enhanced Care	24 hours per day, 7 days per week (including public and bank holidays).	Response within four hours of receipt of a fault report from a Third Party. Repair within five hours of receipt of a fault report by a Third Party.	If a fault is not remedied within five hours of receipt of a fault report by a Third Party, the Dominant Provider shall contact the Third Party to report progress being made to remedy the fault.

59. Receipt by the Dominant Provider from a Third Party of a report of a fault concerning a Partial Private Circuit or Network Infrastructure, shall be acknowledged by the Dominant Provider to the Third Party within one hour.

60. Where the Dominant Provider fails to repair a Partial Private Circuit within the time limits set out in the table in paragraph 58 of this Direction it shall pay to the Third Party a fixed individual compensation payment as set out in paragraphs 61 to 65 inclusive of this Direction in respect of the period commencing on the expiry of the applicable repair time set out in the table in paragraph 58 and expiring at the time the Partial Private Circuit or Network Infrastructure is repaired.

61. Where the Third Party has ordered the Dominant Provider's Regular Care for Partial Private Circuits, the Dominant Provider shall pay the Third Party an amount set in accordance with paragraph 34 of this Direction.

62. Where the Third Party has ordered the Dominant Provider's Regular Care for Network Infrastructure, the Dominant Provider shall pay the Third Party an amount set in accordance with paragraph 34 of this Direction.

63. Where the Third Party has ordered the Dominant Provider's Enhanced Care for Partial Private Circuits, the Dominant Provider shall pay the Third Party an amount set in accordance with paragraph 34 of this Direction.

64. Where the Third Party has ordered the Dominant Provider's Enhanced Care for Network Infrastructure, the Dominant Provider shall pay the Third Party an amount set in accordance with paragraph 34 of this Direction.

65. The Dominant Provider shall not be liable to pay fixed individual compensation pursuant to paragraphs 62 and 64 of this Direction where it is also liable for fixed individual compensation pursuant to paragraphs 61 and 63 of this Direction where the Partial Private Circuit is being provided using the Network Infrastructure which is being repaired.

66. The Dominant Provider shall attend, and invite Third Parties to regular meetings to review the level of service provided by it in relation to Partial Private Circuits and related Network Infrastructure.

Change of speed or interface

67. The Dominant Provider shall offer to provide within a reasonable period of a Third Party's written request, the ability to alter the speed or interface of a Partial Private Circuit.

68. The Dominant Provider shall ensure that it provides to a Third Party a Partial Private Circuit variant for the services to which paragraph 67 of this Direction applies, which are equivalent to the services it currently provides on a retail basis for retail leased lines.

STM-1, ISH and CSH handover

69. The Dominant Provider shall offer to provide within a reasonable period of a Third Party's written request for a Synchronous Transfer Mode-1 ("STM-1"), an interface using an ISH link or CSH link; and handover pursuant to paragraph 70 of this Direction. Such link or handover shall be provided by way of network connecting apparatus capable of providing no more than the STM-1 capacity ordered by the Third Party.

70. The Dominant Provider shall within a reasonable period of a Third Party's written request, handover in a footway jointing chamber for Partial Private Circuits at a reasonable point nominated by the Third Party. The footway jointing chamber shall be located in the same Dominant Provider local serving exchange area as the Dominant Provider Serving Node to which the Partial Private Circuits being handed over are connected.

Equipment re-use

71. Paragraph 72 of this Direction shall only apply to the re-use of Plesiochronous Digital Hierarchy ("PDH") and Synchronous Digital Hierarchy ("SDH") equipment situated at a third party site ("Equipment").

72. The Dominant Provider may reject a request by a Third Party for re-use of PDH Equipment if such re-use would be incompatible with its network. Any such rejection by the Dominant Provider shall be made within 10 working days of a request by the Third Party and fully justified in writing to the requesting Third Party at the same time as the request is rejected.

Other Circuits

73. Unless Ofcom otherwise agrees, the Dominant Provider shall, offer to provide Partial Private Circuit with no single point of failure, within a reasonable period of a Third Party's request.

74. The Dominant Provider shall offer to provide, within a reasonable period of a Third Party's written request, a Partial Private Circuit which is dual pathed and diversely routed from a third party customer's premises to a Third Party's single Point of Connection.

RBS Backhaul

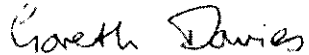
75. The Dominant Provider shall offer to provide to a Third Party, within a reasonable period of the Third Party's written request, transparent transmission capacity at all bandwidths up to and including a bandwidth capacity of two megabits per second between a radio base station and a Point of Connection with a Third Party's electronic communications network connected to the nearest appropriate digital cross connection node.

General

76. The Dominant Provider shall implement this Direction within 10 working days of its publication.

77. This Direction shall take effect on the day it is published.

Business connectivity Market Review

A handwritten signature in black ink, appearing to read 'Gareth Davies'.

Gareth Davies
Competition Policy Director, Ofcom

**A person duly authorised in accordance with paragraph 18 of the Schedule to the
Office of Communications Act 2002**

8 December 2008

Schedule 12

Direction under section 49 of the Communications Act 2003 and SMP Services Condition GG1 imposed on British Telecommunications plc ('BT') as a result of the market power determinations made by the Office of Communications ('Ofcom') that BT has significant market power in the market for the provision of traditional interface symmetric broadband origination with a bandwidth capacity above eight megabits per second and up to and including forty five megabits per second for the UK (excluding the Hull Area and the Central and East London Area)

WHEREAS:

- (A) As a result of a market analysis carried out by Ofcom, it determined on 8 December 2008, in accordance with sections 48 (1) and 80 of the Act, that the Dominant Provider has significant market power in the markets for the provision of wholesale traditional interface symmetric broadband origination with a bandwidth capacity above eight megabits per second and up to and including forty five megabits per second for the UK (excluding the Hull Area and the Central and East London Area);
- (B) In accordance with section 79 of the Act Ofcom set SMP Service Condition GG1 which imposes various obligations on the Dominant Provider, *inter alia*, the obligation to comply with any Direction Ofcom may from time to time make under this Condition;
- (C) This Direction concerns matters to which Condition GG1 relates;
- (D) For the reasons set out in the explanatory statement accompanying this Direction, Ofcom is satisfied that, in accordance with section 49(2) of the Act, this Direction is:
 - (i) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
 - (ii) not such as to discriminate unduly against particular persons or against a particular description of persons;
 - (iii) proportionate to what it is intended to achieve; and
 - (iv) in relation to what it is intended to achieve, transparent;
- (E) For the reasons set out in the explanatory statement accompanying this Direction, Ofcom is satisfied that it has acted in accordance with the relevant duties set out in sections 3 and 4 of the Act;
- (F) Ofcom has on 17 January 2008 published a notification of the proposed Direction in accordance with section 49 of the Act;
- (G) By virtue of section 49(9) of the Act, Ofcom may give effect to any proposals to give the Direction with or without modification, where
 - (i) it has considered every representation about the proposals duly made to OFCOM, within the time period specified in the Consultation Notification; and
 - (ii) it has regard to every international obligation of the United Kingdom (if any) which has been notified to OFCOM for this purpose by the Secretary of State; and
- (H) OFCOM received responses to the proposed Direction and has considered every such representation duly made to it in respect of the proposals; and the Secretary of State has

not notified OFCOM of any international obligation of the United Kingdom for this purpose;

NOW, therefore, pursuant to Condition GG1 Ofcom makes the following Direction:

Definitions

For the purpose of interpreting this Direction the following definitions shall apply:

“Act” means the Communications Act 2003;

“Central and East London Area” (‘CELA’) means the area in London consisting of the postal sectors set out in the Appendix to the Notification contained in Annex 8 to Ofcom’s explanatory statement published on 8 December 2008.

“Dominant Provider” means British Telecommunications plc (‘BT’), whose registered company number is 1800000 and any British Telecommunications plc subsidiary or holding company, or any subsidiary of that holding company, all as defined by Section 736 of the Companies Act 1985 as amended by the Companies Act 1989;

“Hull Area” means the area defined as the ‘Licensed Area’ in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and KCOM Group plc;

“Point of Connection” means a point at which the Dominant Provider’s Electronic Communications Network and another person’s Electronic Communications Network are connected;

“Third Party” means a person providing a public Electronic Communications Service or a person providing a public Electronic Communications Network.

For the purpose of this Direction the following terms shall have the meaning as set out in the Dominant Provider’s Standard PPC Handover Agreement, as at the date of publication of this Direction, but with the necessary changes in order to ensure compliance with the Direction:

- Advance Capacity Order
- Advance Order Commitment
- BT Retail Private Circuit
- BT Serving Node
- Capacity Order
- Capacity Profile
- Customer Sited Handover (“CSH”)
- Forecast Profile

- In-Span Handover ("ISH")
- Re-Designation
- Qualifying BT Retail Private Circuit

The following definitions shall also apply for the purpose of this Direction:

Term	Definition
Acceptance of Terms	Date on which a Third Party confirms acceptance of delivery conditions and is committed to the order.
Civil Works	Works that necessitate the digging up of a street for the installation of ducts.
Committed Delivery Date	The date confirmed by the Dominant Provider as the delivery date.
Firm Offer Confirmation ("FOC")	Confirmation by the Dominant Provider in writing (by fax or e-mail) to a Third Party of the delivery conditions including price and Committed Delivery Date, after acknowledging receipt of an order for a Partial Private Circuit or Network Infrastructure from a Third Party.
FOC Acceptance Interval	The number of working days from the FOC Date until the Acceptance of Terms.
FOC Date	The date on which the Dominant Provider makes a Firm Offer Confirmation.
FOC Receipt Interval	The number of working days from the Order Request Date until the FOC Date.
Installation Date	Date of installation of a Partial Private Circuit or Network Infrastructure.
Network Infrastructure	The categories of products listed in the table contained in paragraph 51 of this Direction.
Order Request Date	Date on which a Third Party dispatches a valid Partial Private Circuit order, or Network Infrastructure order, to the Dominant Provider.
Partial Private Circuit ("PPC")	A circuit provided pursuant to the PPC Contract and in accordance with the Directions.